

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
v.) Criminal Action
 No. 13-10200-GAO
)
DZHOKHAR A. TSARNAEV, also)
known as Jahar Tsarni,)
)
)
Defendant.)
)

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

JURY TRIAL - DAY FORTY-FOUR

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Tuesday, April 7, 2015
9:09 a.m.

Marcia G. Patrisso, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 3510
Boston, Massachusetts 02210
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

1 APPEARANCES:

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On Behalf of the Defendant

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PROCEDINGS

2 THE CLERK: All rise for the Court and the jury.

3 (The Court and jury enter the courtroom at 9:09 a.m.)

5 THE COURT: Good morning, jurors.

6 THE JURORS: Good morning.

THE COURT: The record will reflect that all 12 deliberating jurors have returned, as well as the six alternates.

00:05 10 Jurors, I ask you again, have you all abided by my
11 instructions to avoid any investigation of the case, any
12 exposure to media and any discussion of the cases with anyone?

13 THE JURORS: Yes.

14 THE COURT: Thank you.

15 So we'll ask the deliberating jurors now to withdraw
16 and commence their deliberations. As I have said to you, for
17 your guidance and information you will have a copy of the
18 indictment for reference. It is not evidence but it will set
19 out the charges as they are made. You will have a copy
00:05 20 of -- written copy of my jury instructions, both as to the
21 substantive offenses and the elements of the offenses, and as
22 to the questions of evidence and burden of proof and so on.

23 And you will have, importantly, a verdict slip which
24 consists of basically one page for each of the counts with the
25 questions and the directions. Just follow the directions as

1 they appear on the verdict slip. In some cases there are
2 options depending on how the question is answered, whether you
3 go on -- further on the page or whether you go to the next
4 page. But I think that will be quite clear to you in your
5 deliberations.

6 All right. So with that, we'll ask the jury to
7 commence deliberations.

8 THE CLERK: All rise for the jury.

9 (The jury exits the courtroom at 9:11 a.m.)

00:07 10 THE CLERK: Be seated.

11 THE COURT: I just want to know the status of the
12 exhibits. They may be released?

13 MS. CONRAD: Your Honor, we're trying to work through
14 it. There's some disagreement, first of all, between the
15 government and the defense about certain exhibits that may or
16 may not have come in through our examination of Elena Graff. I
17 contacted the court reporter who took that portion of the
18 testimony and I had asked her to provide a transcript of the
19 direct -- or at least a list of the exhibits that came in. She
00:07 20 said she could not get that done until eleven this morning.

21 There are also some supplemental exhibits. I've got
22 some things in my notes that reflect that certain things came
23 in and the government said they didn't come in. I don't know
24 how to resolve it short of the court reporter.

25 Now, we could send what we've got now, although there

1 are a number --

2 THE COURT: Well, I think we have to do that. So with
3 respect to the first category, Graff, send it -- we'll send it
4 without them and it can be supplemented.

5 MS. CONRAD: Okay. There are also -- there were also
6 were some issues, and I haven't checked to see whether they've
7 been addressed. The government, for example, had a typo in a
8 filing that referred to "propagation of nasheeds" as
9 "propaganda of nasheeds," and we asked them to change it and
00:08 10 they declined to do so. Mr. Lyness indicated that he might be
11 able to do that himself. I don't know if that's been done. I
12 don't know the exhibit number.

13 THE CLERK: Not yet because I don't know what the
14 exhibit number is.

15 THE COURT: Well, I think it is what it is. If there
16 are typos, there are typos.

17 MS. CONRAD: Well, the government asked us to change
18 some file names and we did it and we're asking them --

19 THE COURT: The clock matters. The jury has to begin
00:08 20 its work. So if there are some as to which it's doubtful
21 whether they're in or not, I would say hold them back for now
22 and we can add them as soon as that may be. Two hours is a
23 little bit long, but if that's what it is, that's what it is.

24 MS. CONRAD: In other words, at least one or two I
25 sent over yesterday afternoon to Mr. Lyness that the government

1 did agree to. One was 206A. I didn't see it on this list, so.
2 But again, that's a Graff exhibit, so we can put that in with
3 the rest. But I haven't been able to --

4 THE COURT: Okay. Well, they've got to get something
5 to work with.

6 MR. CHAKRAVARTY: Your Honor, while we're talking
7 about it, the government discovered yesterday that there are
8 three photos of one of the victims that the court reporter does
9 confirm were actually admitted which we didn't have on the
00:09 10 original JERS list. So we will supplement those. Those also
11 are not things that should hold up the jury in deliberating,
12 but we would supplement the JERS with Exhibits 1499 through
13 1501.

14 THE COURT: Well, I have to say, it is irregular for
15 them not to have all the exhibits, and I'm uncomfortable with
16 it. But the batch of exhibits is such that I think if it's a
17 small number, we can perhaps use the supplemental opportunity.
18 But it has to happen fast.

19 MS. CONRAD: And as for physical exhibits, I have not
00:10 20 yet had an opportunity to inspect those. I understand that's
21 going to happen as soon as the court adjourns.

22 THE COURT: Okay.

23 MR. WEINREB: Your Honor, we would like to be heard at
24 sidebar about one matter.

25 (Sidebar conference redacted.)

1 THE COURT: I think everybody has received copies of
2 what we propose to send in. Some redactions have been made.
3 Would you look at those? You may not have had a full chance to
4 do it. But basically, the indictment was redacted in the way
5 discussed at side, particularly in the "use and carry" and --
6 with respect to Count 6, 7 and 9.

7 And then there's a final form of the verdict slip as
8 well, and I think my instructions.

9 MR. WEINREB: Your Honor, the government's reviewed
00:13 10 the indictment and has no objection to it.

11 THE COURT: So I have a package here which we will
12 deliver to them as soon as we get the clearance, all right?

13 Okay. We'll be in recess.

14 THE CLERK: All rise for the Court.

15 (The Court exits the courtroom and the proceedings
16 adjourned at 9:18 a.m.)

17 THE CLERK: All rise for the Court and the jury.

18 (The Court and jury enter the courtroom at 4:40 p.m.)

19 THE CLERK: Be seated.

07:35 20 THE COURT: All right, jurors. It's been a long day.
21 It's time to call it a day. And we're going to ask you to
22 recess for the evening and resume tomorrow.

23 You have just sent us two notes with questions, which
24 I'll share with the lawyers after we've discharged you. We'll
25 answer those questions for you in the morning as we begin the

1 deliberations.

2 What I'm going to ask you to do, whoever the
3 foreperson of the jury is, is to take the verdict slip, whether
4 it's been filled out partially or not at all or -- and put it
5 in this envelope, this sealed envelope, and seal it. Then the
6 clerk will take custody of it, put it in a safe, and he'll
7 return it to you tomorrow in a sealed condition and you will
8 unseal it and resume, all right?

9 Let me again remind you it is extremely important that
07:36 10 you avoid any discussion of the case or even any consideration
11 of the case. Don't even be thinking about it tonight. But
12 particularly not communicating with anybody about it, not doing
13 any investigation of any kind and so on. You know how
14 sensitive the time is when you're a deliberating jury, and it
15 is extremely important that you observe that, as you have
16 assured me you have been observing all along anyway. But I
17 just repeat that because it is a particularly critical time in
18 the case.

19 With that, have a pleasant evening. We'll see you
07:36 20 tomorrow morning and we'll continue with the work.

21 THE CLERK: All rise for the jury.

22 THE COURT: I'll stay with the lawyers for just a
23 minute.

24 (The jury exits the courtroom at 4:42 p.m.)

25 THE COURT: Okay. Counsel, as you heard, there are

1 two notes. The times that recorded are 4:25 and 4:30, so they
2 literally were just being filled out as we decided to call them
3 out. When we recess, the clerk will share them with you. You
4 can look at them and think about them overnight.

5 I would like to meet in a lobby conference at quarter
6 of nine tomorrow to talk about the responses, all right?

7 Thank you. We'll be in recess.

8 THE CLERK: All rise for the Court. The Court will be
9 in recesses.

07:38 10 (The Court exits the courtroom and the proceedings
11 adjourned at 4:43 p.m.)

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C E R T I F I C A T E

I, Marcia G. Patrisso, RMR, CRR, Official Reporter of
the United States District Court, do hereby certify that the
foregoing transcript constitutes, to the best of my skill and
ability, a true and accurate transcription of my stenotype
notes taken in the matter of Criminal Action No. 13-10200-GAO,
United States of America v. Dzhokhar A. Tsarnaev.

10 /s/ Marcia G. Patrisso
11 MARCIA G. PATRISSO, RMR, CRR
11 Official Court Reporter

Date: 10/29/15